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TRANSNASIONAL EXPRESS SDN BHD & ORS v. TAN CHONG INDUSTRIAL EQUIPMENT SDN BHD

COURT OF APPEAL, PUTRAJAYA
IDRUS HARUN JCA
SURAYA OTHMAN JCA
B STEPHEN CHUNG JCA
[CIVIL APPEAL NO: W-02(IM)(NCVC)-92-01-2018]
1 JUNE 2020

C ***CIVIL PROCEDURE:*** *Striking out – Appeal against – Appeal against decision to strike out plaintiffs' writ of summons and statement of claim – Whether plaintiffs ought to be given opportunity to fully ventilate grievances at proper trial and seek redress – Whether there were vitiating factors warranting plaintiffs' allegation of coercion and unjust enrichment – Whether plaintiffs complied with conditions under s. 71 of Contracts Act 1950 – Whether plaintiffs had locus standi to bring suit* D *– Whether plaintiffs pleaded reasonable cause of action – Whether plaintiffs' claim plain and obvious case to warrant recourse of summary process – Rules of Court 2012, O. 18 r. 19(1)(a), (b) and/or (d)*

The respondent ('defendant') was a company that owned buses while the appellants ('plaintiffs') were plaintiffs 1 to 6, express bus companies which E were subsidiaries of plaintiff 7. Plaintiffs 1 to 3 had entered into a number of bus lease agreements with the defendant, by which the defendant had leased buses to plaintiffs 1 to 3. Plaintiffs 1 to 6 had signed several maintenance agreements with the defendant to provide maintenance works for buses leased to plaintiffs 1 to 6. Plaintiffs 1 to 6 defaulted in their monthly F payments under the lease and maintenance agreements, incurring debt. Due to the default, the defendant terminated the lease and maintenance agreements and repossessed 49 buses from the plaintiffs. Subsequently, the plaintiffs and the defendant reached a settlement agreement, where it was agreed, *inter alia*, that plaintiffs 1 to 6 shall be jointly and severally liable to G the defendant for the full settlement of the debt; that plaintiff 7 as the owner of a piece of land ('said land') shall transfer the said land to the defendant as part settlement of the debt; that the said land was valued at RM16,000,000 and after taking into account the value of the land, the balance debt due, owing and payable by plaintiffs 1 to 6 was RM16,920,575.06. Pursuant to the settlement agreement, a sale and purchase agreement was entered into H between plaintiff 7 and the defendant on the sale of the said land to the defendant. After both the settlement agreement and the sale and purchase agreement were signed, the defendant alleged that the plaintiffs breached the settlement agreement and the defendant thus terminated the settlement

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agreement and repossessed the 49 buses from the plaintiffs. The plaintiffs instituted a suit against the defendant seeking, *inter alia*, an injunction against the defendant from repossessing the buses; from dealing with the said land; a declaration that the said land's value was RM55,600,000 (55.6 million); the defendant to return RM877,000 being the compensation paid by the Government for the acquisition of part of the said land and the defendant to pay plaintiff 7 a sum of RM22,679,424.94 being the balance of the value of the said land after deducting RM32,920,575.96 being the sum owed by the plaintiffs to the defendant. In response, the defendant filed encl. 15 to strike out the plaintiffs' claim under O. 18 r. 19 of the Rules of Court 2012 on the grounds that (i) the statement of claim did not disclose any reasonable cause of action since the plaintiffs had no *locus standi* in law to institute the suit to seek various reliefs; (ii) plaintiff 7 was bound by the terms of the settlement agreement of the sale and purchase agreement; and (iii) all the seven plaintiffs, having affirmed both the settlement agreement and the sale and purchase agreement, were precluded from challenging them. The High Court allowed the defendant's application to strike out the plaintiffs' writ and summons and statement of claim. Hence, this appeal. The plaintiffs submitted that (i) the High Court had erred regarding the issue of *locus standi*; (ii) the High Court had not considered that the plaintiffs were forced or coerced into agreeing on the price/value of the said land at RM16 million; and (iii) the defendant had been unreasonably and unjustly enriched in this transaction to the detriment of the plaintiffs.

Held (allowing appeal; setting aside order of High Court)
Per Suraya Othman JCA delivering the judgment of the court:

(1) It was not the plaintiffs' case to rescind or resile from both the settlement and the sale and purchase agreements. What the plaintiffs wanted was an opportunity to fully ventilate their grievances at a proper trial and seek redress for what they felt was a grossly unconscionable state of affairs. The plaintiffs supported their claim by alleging that the transactions with the defendant through these agreements were not at arm's length. From the statement of claim and the plaintiffs' affidavit in reply, the plaintiffs had specifically raised the issues of coercion and unjust enrichment, which were issues not dealt with by the High Court. On the examination of the facts of the case, the plaintiffs had complied with the essential conditions under s. 71 of the Contracts Act 1950 sufficient to warrant a chance to air their grievances at a full trial in the High Court. (paras 16, 17, 19 & 27)

(2) If the market or fair value of the said land stood at RM55 million and if the defendant paid RM16 million, the profit the defendant would stand to make was RM39 million and if the value of the said land was at RM51 million, the profit would be RM35 million. The amount of profit the defendant would have made was astoundingly excessive and unconscionable. Further, there were vitiating factors present in this case, which warranted the plaintiffs' allegation of coercion and unjust enrichment to be fully ventilated in a trial. The plaintiffs had pleaded a reasonable cause of action which was not obviously unsustainable. Therefore, the plaintiffs' claim was not a plain and obvious case to warrant the recourse of the summary process of striking out under O. 18 r. 19 of the ROC 2012. (para 30)

(3) Plaintiffs 1 to 6 were the parties who had business dealings with the defendant in the leasing of the buses and the subsequent maintenance agreements for the buses. The settlement agreement was signed by plaintiffs 1 to 6. The debt attributable to plaintiffs 1 to 6 was in fact settled by virtue of the conveyance of the said land which the plaintiffs alleged to be worth in excess of RM55 million at fair market value, therefore the defendant was unjustly enriched and obligated to extinguish the debt, repay plaintiff 7 the excess overpayment and return the buses to plaintiffs 1 to 6. Plaintiff 7 as the registered owner of the said land conveyed the said land to the defendant and thus had the right and *locus standi* to claim unjust enrichment against the defendant and the resulting overpayment amounting to RM22,679,424.94, based on the fair market value of RM55 million or RM51 million. Thus, all the seven plaintiffs had the necessary *locus standi* to bring on the suit against the defendant for a declaration on the fair market value of the said land, the injunction against repossession and the disposal of the buses as well as the return of the repossessed buses. (para 33)

Case(s) referred to:

Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd [1993] 4 CLJ 7 SC ***(refd)***

Bank Islam Malaysia Bhd v. Lim Kok Hoe & Anor And Other Appeals [2009] 6 CLJ 22 CA ***(refd)***

Dream Property Sdn Bhd v. Atlas Housing Sdn Bhd [2015] 2 CLJ 453 FC ***(refd)***

Government of Malaysia v. Lim Kit Siang & Another Case [1988] 1 CLJ 219; [1988] 1 CLJ (Rep) 63 SC ***(refd)***

New Kok Ann Realty Sdn Bhd v. Development & Commercial Bank Ltd New Hebrides (In Liquidation) [1986] 1 LNS 30 SC ***(refd)***

Sediperak Sdn Bhd v. Baboo Chowdhury [1999] 5 CLJ 31 HC ***(refd)***

Siow Wong Fatt v. Susur Rotan Mining Ltd & Anor [1967] 1 LNS 161 PC ***(refd)***

Tan Sri Hj Othman Saat v. Mohamed Ismail [1982] 1 LNS 2 FC ***(refd)***

Legislation referred to:
Contracts Act 1950, ss. 71, 73
Rules of Court 2012, O. 18 r. 19(1)(a), (b), (d)

Other source(s) referred to:
Low Weng Tchung, *The Law of Restitution and Unjust Enrichment in Malaysia,* 1st edn, 2015, pp 61-62

For the appellants - R Thilakan & S Sivanesan; M/s Nesan Cheng & Co
For the respondent - Romesh Abraham, Tan Gian Chung & Alysha Onn; M/s Shook Lin & Bok

[Editor's note: Appeal from High Court, Kuala Lumpur; Suit No: WA-22NCVC-404-08-2017 (overruled).]

Reported by Suhainah Wahiduddin

JUDGMENT

Suraya Othman JCA:

Introduction

[1] This is an appeal against the decision of the Kuala Lumpur High Court Judge dated 4 January 2018 which allowed the defendant's application to strike out the plaintiffs' writ of summons and statement of claim pursuant to O. 18 r. 19(1)(a), (b) and/or (d) of the Rules of Court 2012 ("ROC 2012").

[2] Aggrieved with the said decision, the seven plaintiffs: Transnasional Express Sdn Bhd (plaintiff 1), Plusliner Sdn Bhd (plaintiff 2), Syarikat Kenderaan Melayu Kelantan Berhad (plaintiff 3), Syarikat Rembau Tampin Sdn Bhd (plaintiff 4), Kenderaan Langkasuka Sdn Bhd (plaintiff 5), Konsortium Transnasional Berhad (plaintiff 6) and MHSB Properties Sdn Bhd (plaintiff 7) filed the instant appeal. After hearing the parties and after taking into consideration the written as well as the oral submissions, we allowed the appeal. We now provide our reasons for allowing the appeal and for convenience, the parties will be referred to as they were in the High Court.

Background Facts

[3] The defendant, Tan Chong Industrial Equipment Sdn Bhd, is the owner of the buses. Plaintiffs 1 to 6 are express bus companies which are subsidiaries of plaintiff 7. Plaintiffs 1 to 3 had entered into a number of bus lease agreements with the defendant, by which the defendant had leased buses to plaintiffs 1 to 3. Plaintiffs 1 to 6 had signed several maintenance agreements with the defendant to provide maintenance works for buses leased to plaintiffs 1 to 6.

[4] Plaintiffs 1 to 6 defaulted in their monthly payments under the lease and maintenance agreements, then incurring a debt to the amount of RM32,920,575.06. Due to the default, the defendant terminated the lease and maintenance agreements on 21 April 2016 and repossessed 49 buses from the plaintiffs.

[5] A series of meetings took place in early May 2016 between the plaintiffs and the defendant which culminated into a settlement agreement on 4 July 2016 between plaintiffs 1 to 6 and the defendant. Under the terms of the settlement agreement, it was agreed, *inter alia*, that plaintiffs 1 to 6 shall be jointly and severally liable to the defendant for the full settlement of the debt; that plaintiff 7 as the owner of a piece of land held under H.S.(D) 87546, PT No. 7929, Bandar Ampang, Daerah Ulu Langat, Negeri Selangor ("said land") shall transfer the said land to the defendant as part settlement of the debt; that the said land is valued at RM16,000,000 (16 million) and after taking into account the value of the land at RM16 million, the balance debt due, owing and payable by plaintiffs 1 to 6 is RM16,920,575.06.

[6] Pursuant to the settlement agreement, a sale and purchase agreement was entered into between plaintiff 7 and the defendant on 4 July 2016 on the sale of the said land to the defendant.

[7] After both the settlement agreement and the sale and purchase agreement were signed, the defendant alleged that the plaintiffs breached the settlement agreement and the defendant on 16 June 2017 terminated the settlement agreement and repossessed 49 busses from the plaintiffs.

[8] The plaintiffs then instituted a suit against the defendant on 12 August 2017 seeking, *inter alia*, an injunction against the defendant from repossessing the buses; from dealing with the said land: a declaration that the said land's value is RM55,600,000 (55.6 million); defendant to return RM877,000 being the compensation paid by the Government for the acquisition of part of the said land and the defendant to pay to plaintiff 7 a sum of RM22,679,424.94 being the balance of the value of the said land after deducting RM32,920,575.06 being the sum owed by the plaintiffs to the defendant.

[9] In response to the suit, the defendant then filed encl. 15 to strike out the plaintiffs' claim under O. 18 r. 19 ROC 2012 on the grounds that the statement of claim does not disclose any reasonable cause of action since the plaintiffs have no *locus standi* in law to institute the suit to seek the various reliefs; that plaintiff 7 is bound by the terms of the settlement agreement of the sale and purchase agreement and all the seven plaintiffs having affirmed both the settlement agreement and the sale and purchase agreement were

precluded from challenging them. Enclosure 15 was heard and allowed by the learned High Court Judge ("HCJ") on 4 January 2018 and hence this appeal before us.

Findings Of The High Court

[10] In brief, the learned HCJ found that there was no reasonable cause of action disclosed in the plaintiffs' statement of claim as the plaintiffs had failed to establish that:

(i) they have the *locus standi* to seek to challenge the agreed sale price of RM16 million since plaintiffs 1 to 6 were not parties to the sale and purchase agreement of the said land;

(ii) Plaintiff 7 has no *locus standi* since plaintiff 7 had delivered the original issue document of title and memorandum of transfer to the defendant and thus had no beneficial interest in the said land; and

(iii) Plaintiff 7 was bound by the terms of the sale and purchase agreement which stated that the agreed sale price of the said land is at RM16 million and all the seven plaintiffs having affirmed both the settlement agreement and the sale and purchase agreement were precluded from challenging them.

Our Decision/Our Analysis And Findings

[11] The plaintiffs/appellants have raised three main grounds in this appeal. That the learned HCJ had erred regarding the issue of *locus standi*; that the learned HCJ had not considered that the plaintiffs were forced or coerced into agreeing on the price/value of the said land at RM16 million and that the defendant had been unreasonably and unjustly enriched in this transaction to the plaintiffs' detriment. The defendant countered by contending that all the seven plaintiffs have no *locus standi* to bring this suit since plaintiffs 1 to 6 were not parties to the sale and purchase agreement of the said land and plaintiff 7, who is a party to the sale and purchase agreement, had signed the memorandum of transfer of the said land to the defendant and as such plaintiff 7 is bound by the said terms of the sale and purchase agreement and are precluded from challenging the agreed sale price/value of the said land which was fixed at RM16 million.

The Law On Striking Out

[12] In light of the allegations made by the plaintiffs, the question that needed to be answered is whether this is a proper and suitable case for striking out the plaintiffs' writ and statement of claim summarily under O. 18 r. 19 of the ROC 2012 based on the well-established principles in the

Supreme Court case in *Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd* [1993] 4 CLJ 7; [1993] 3 MLJ 36. It must be noted that the principles upon which the court acts in exercising its power under any of the four limbs of O. 18 r. 19(1) of the ROC 2012 are well settled. It is only in plain and obvious cases that recourse should be had to the summary process under this rule and the summary procedure can only be adopted when it can clearly be seen that a claim or answer is on the face of it obviously unsustainable. That being so, it cannot be exercised by a minute examination of the documents and facts of the case in order to see whether the party has a cause of action or a defence.

[13] Therefore, from the facts of the case, has the defendant, as expounded in *Bandar Builders* (*supra*), succeeded in satisfying, on affidavit evidence and pleadings that this is a plain and obvious case for striking out? A look at the statement of claim is crucial in determining whether, on the face of it, the plaintiffs, have an obviously unsustainable claim to warrant striking out.

Statement Of Claim

[14] On perusal of the statement of claim, the plaintiffs had alleged at paras. 15 and16 that due to the defendant's refusal to accept the plaintiffs' rough estimate of the value of the said land which the plaintiffs put, at the least, RM32 million; and since the plaintiffs were under pressure to get back the busses that were repossessed by the defendant due to the upcoming Hari Raya season; they were coerced into accepting all the terms, including the price fixed by the defendant of the said land. Then at para. 20, the plaintiffs again alleged that with the knowledge that the plaintiffs were under pressure to get back the repossessed busses to operate for the Hari Raya 2017 season which would commence shortly, the defendant had valued plaintiff 7's land at a very low price of RM16 million when the actual price, according to the Government's valuer, is at RM51,362,578.80. Thus by doing so, the defendant had unreasonably and unjustly enriched themselves by coercing the plaintiffs into accepting the defendant's valuer's valuation without taking into account the actual market value of the said land. And at para. 21, the plaintiffs alleged that their valuer had valued the said land at RM55.6 million and if RM32,920,575.06 which is the total amount owed by the plaintiff is deducted from the RM55.6 million, there would be a surplus of RM22,679,424.94 which sum the defendant had to pay back or return to the plaintiffs, otherwise the defendant would be unjustly enriched at the expense of the plaintiffs in the sum of RM22,679,424.94

[15] Thus looking at the statement of claim, if the allegations made by the plaintiffs could be proven in a trial that the actual market price of plaintiff 7's land is within the region of about RM51 or RM55 million and the price fixed in the sale and purchase agreement is RM16 million, then the defendant would have made an extremely huge profit from the sale of the said land to the amount of at least RM35 million (RM51 million - RM16 million = RM35 million) or RM39 million (RM55 million - RM16 million = RM39 million).This amount is astoundingly excessive and unconscionable.

[16] It must be noted that it is not the plaintiffs' case to rescind or resile from both the settlement and the sale and purchase agreements. What the plaintiffs wanted was an opportunity to fully ventilate their grievances at a proper trial and seek redress for what they felt was a grossly unconscionable state of affairs. To achieve this, the plaintiffs in their suit had sought the reliefs as follows:

(i) to give full effect to both the agreements;

(ii) a declaration as to the fair market value of the said land and consequently, the full settlement of the debt due to the defendant as at 4 July 2016; and

(iii) to claim the overpayment in excess of RM22 million as well as the return of the repossessed buses for the plaintiffs to operate for the Hari Raya season.

[17] And the plaintiffs supported their claim by alleging that the transactions with the defendant through these two agreements were not at arm's length. This is so, since the plaintiffs were put under great pressure to get back the repossessed busses from the defendant for use in the upcoming Hari Raya and the defendant knowing the plaintiffs' predicament, exerted undue influence and coercion resulting in the plaintiffs entering into the agreements to sell the said land at a low price fixed by the defendant at RM16 million when the actual or fair market value should have been at RM51 or RM55 million.

[18] The defendant contended that plaintiff 7 was bound by the terms of the sale and purchase agreement which stated that the agreed sale price of the said land is fixed at RM16 million and since all the seven plaintiffs had affirmed both the settlement and the sale and purchase agreements, the plaintiffs are precluded from now challenging them. In answer to this, the plaintiffs, had in their affidavit in reply (affirmed on 5 September 2017) to the defendant's application for striking out, deposed at para 5.3 that the plaintiffs had intended to transfer the said land to the defendant in full settlement of the

RM32 million debts due to the defendant; at para. 5.4 that there was a meeting between the plaintiffs' and the defendant's representatives on 24 May 2016 to discuss the value of the said land and terms of settlement; at para. 5.5 that the defendant had informed the plaintiffs that they had received the valuation reports for the said land from three authorised valuers and the highest value given by the valuer was at RM20 million and despite that, the defendant had fixed RM16 million as the value of the said land and at para. 5.8, the plaintiffs deposed that despite their rough estimation that the value of the said land should be at least RM32 million and sufficient to pay their debt due to the defendant, the plaintiffs had no choice but to agree to RM16 million since their main source of income are from the sale of tickets sold during the Hari Raya season and for this they needed the buses that were repossessed by the defendant.

[19] From the statement of claim and the plaintiffs' affidavit in reply, the plaintiffs had specifically raised the issues of coercion and unjust enrichment. These issues other than the issue of *locus standi*, were not dealt with by the learned HCJ who based his decision mainly on the fact that the plaintiffs have no *locus standi* to institute the suit and that plaintiff 7 is bound by the terms of the sale and purchase agreement which plaintiff 7 had agreed to which stated that the agreed sale price of the said land is at RM16 million. And the learned HCJ found that since all the seven plaintiffs had affirmed both the settlement agreement and the sale and purchase agreement, they are precluded from challenging them.

[20] The question that needed to be posed here is what is the coercion allegedly practised or imposed by the defendant upon the plaintiffs which had led to the defendant being unjustly enriched at the expense of the plaintiffs. From a perusal of the statement of claim and the plaintiffs' affidavit in reply to the striking out application, the coercion imposed by the defendant was when the defendant fixed the value of the said land at a very low price of RM16 million. The plaintiffs, desperate for the return of the 49 repossessed busses by the defendant which the plaintiffs relied on as a main source of income for the Hari Raya season, had no choice but to agree to the low price/value. In such a situation, when a plaintiff is being coerced to pay money, what is the effect in law of such payment?

[21] Section 73 of the Contracts Act 1950 (Act 136), deals with coercion. It states that a person to whom money has been paid, or anything delivered, under coercion, must repay or return it.

> **Liability of person to whom money is paid, or thing delivered, by mistake or under coercion**
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> 73. a person to whom money has been paid, or anything delivered, by mistake or **under coercion, must repay or return it**. (emphasis added)

[22] And what constitutes unjust enrichment? It is a concept under which a claimant is entitled to restitution if he can show that a defendant was enriched at his expense and that there was no legal ground for the defendant's enrichment. Under the concept of unjust enrichment, a defendant can escape liability by showing that there was a legal ground for his enrichment, for example because the claimant was required to benefit the defendant by statute or by contract. The reason why there is no liability in these circumstances is that the defendant's enrichment is not unjustified.

[23] Section 71 of the Contracts Act deals with unjust enrichment. It states that a person who enjoys the benefit of non-gratuitous act is obliged or bound to make compensation or to restore the thing so done or delivered.

> **Obligation of person enjoying benefit of non-gratuitous act**
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> 71. Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

[24] The case of *Sediperak Sdn Bhd v. Baboo Chowdhury* [1999] 5 CLJ 31 throws light on s. 71 as follows:

> The Court held that "by way of Addendum, I feel constrained to say something of S.71 of the Contracts act 1950. That Section is worded in this way:
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> *Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered* and it is *pari materia* with S.70 of the Indian Contract Act. Section 71 of the Contract Act 1950 is all encompassing. It enables a person who actually supplier goods or renders some service not intending to do so gratuitously to claim compensation from the person who enjoys the benefit of the supply made or the services rendered. The payment of RM126,000 for the Immigration Department certainly benefitted the appellants and this must have prompted the trial court to invoke s. 71 of the Contracts Act 1950 vigorously. I am constrained to say that section embodies the equitable principle of restitution and the prevention of unjust enrichment and it seems that the Government is also bound by it. (emphasis added)

[25] In the Federal Court case of *Dream Property Sdn Bhd v. Atlas Housing Sdn Bhd* [2015] 2 CLJ 453; [2015] 2 MLJ 441, at held 1 and 2, it is stated as follows:

A (1) On authority as well as on principle, the appellant was entitled to monetary award in the sum equivalent to the current market value of the mall excluding the market value of the land without the mall. The consequence of making such an order would be that after paying the monetary sum to the appellant, the respondent would from then on enjoy the full benefit of a completely constructed mall on the land which, the B court was informed, had a freehold title. This would unquestionably place the respondent in a far better position than it would have been had it not entered into the SPA with the appellant. It would be manifestly unfair and unjust for the respondent to be enriched to the extent of the full commercial value of the mall if it only had to pay the appellant for the costs of its physical construction.

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(2) *The High Court and the majority of the Court of Appeal failed to judicially appreciate that the amount of unjust enrichment gained by the respondent was not the mere costs of construction of the mall but it was the value of the enhancement, improvement or enrichment of the land as a whole encompassing the obtaining of planning permission, building plan approval, design and conceptual development,* D *business modelling and construction at the appellant's own costs, effort and experience of the shopping mall which subsequently became tenanted with an ongoing business, goodwill and brand name. The appellant had made out a cause of action in unjust enrichment against the respondent.*

At pp. 498 to 499 (CLJ); pp. 486-488 (MLJ), the Federal Court states:

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[128] *The most important question which we must now asked is whether it is unjust for the plaintiff to retain to the benefit (the unjust question).* The English approach to the unjust question is to ascertain an unjust factor such as, for example, mistake or failure of consideration. This differs with the civilian approach to the unjust question which consider whether there is a lack of juristic F basis. Goff & Jones on *The Law of Unjust Enrichment*, para 1-11, explained these two approaches as follows:

Many civilian and mixed law systems have a law of unjustified enrichment, under which a claimant will be entitled to restitution if he can show that a defendant was enriched at his expense and that there was no legal ground for the defendant's enrichment. Under these systems a defendant can escape restitutionary liability by G *showing that there was a legal ground for his enrichment, for example because the claimant was required to benefit the defendant by statute or by contract.* The reason why there is no liability in these circumstances is that the defendant's enrichment is not unjustified and so the claimant has no *prima facie* right to restitution.

H The English law of unjust enrichment frequently produces the same results as the law of civilian and mixed law systems, but it works in a different way. Under English law, a claimant will be entitled to restitution if he can show that a defendant was enriched at his expense, and that the circumstances are such that the law regards this enrichment as unjust.

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For example, a claimant will have a *prima facie* right to restitution where he has transferred a benefit to a defendant by mistake, under duress, or on a basis that fails. Nevertheless, the defendant can escape liability if another legal rule entitles him to keep the benefit, and this rule overrides the rule generated by the law of unjust enrichment which entitles the overrides the rule generated by the law of unjust enrichment which entitles the defendant to restitution. For example, a claimant may have paid money to a defendant by mistake, but even so, the payment may be irrecoverable if the claimant was required to pay the money by a statute or by a contract previously entered by the parties. *Although the claimant would otherwise have a claim in unjust enrichment, the defendant's enrichment is justified by the statute or contract.*

[129] We would adopt 'the absence of basis' (to borrow the term used by Goff & Jones on The Law of Unjust Enrichment para 1-19) approach of the civilian and mixed law systems for the reason that, in our view, it would produce a fairer outcome. Applying this approach, the plaintiff can escape restitutionary liability by showing that there was a legal ground for receiving an enormously enhanced and improved asset in the form of the business of a shopping mall. The important point to note here is that the defendant was not required to benefit the plaintiff by legislations or by contract. In our judgment the reason why there is liability in these circumstances is that the plaintiff's enrichment is unjustified and that there is no legal ground for the plaintiff to claim and enjoy the full commercial value of the mall. Therefore, the defendant has a prima facie right to restitution.

[130] *On the factual matrix of the present case, in our judgment, injustice has occurred to such an extent that the defendant has not only suffered a loss, but the plaintiff is at the same time made richer by the defendant's loss by the same amount. On that note, the point to make here is this. This sense of injustice at the defendant's expense is central to the foundation of the relief of restitution based on the law of unjust enrichment. The plaintiff should not be allowed to reap the windfall at the expense of the defendant. The defendant lawfully constructed the mall on the land not intending to do so gratuitously with the plaintiff enjoying its benefit. On this basis, it warrants judicial intervention as a legal response triggered by an unjust enrichment in the fact situation of the present case.* (emphasis added)

[26] In establishing unjust enrichment, the plaintiffs have to satisfy the four important conditions as decided in the Privy Council case of *Siow Wong Fatt v. Susur Rotan Mining Ltd & Anor* [1967] 1 LNS 161; [1967] 2 MLJ 118, as follows:

(i) must be lawful;

(ii) must be done for another person;

(iii) must not be intended to be done gratuitously; and

(iv) must be such that the other person enjoys the benefit of the act or the delivery.

> These matters must be answered at the time that the act is done or the thing delivered and this is of fundamental importance. As to the first condition it was clearly in the contemplation of both parties that the first respondent should do this work. As to the second condition the act in this case was not done "for another person"; the road was built by the first respondent for their own benefit, for under the chain of contracts it was the body who was going to exploit the land. That was decisive of this case in favor of the appellant. The respondent also failed to satisfy the third condition because, at the time it (i.e. the building of the road) was done, the respondents did not intend to look to another for reimbursement of their expenditure. As to the fourth condition the appellant had benefited from the building of the road. Accordingly, as only one of the four conditions of the said section was satisfied the appeal should be allowed.

[27] On examination of the facts of the case, it is our considered view that the plaintiffs have complied with the four essential conditions under s. 71 of the Contracts Act 1950 as outlined in *New Kok Ann Realty Sdn Bhd v. Development & Commercial Bank Ltd New Hebrides (In Liquidation)* [1986] 1 LNS 30; [1987] 2 MLJ 57, sufficient to warrant a chance to air their grievances at a full trial in the High Court.

[28] The defendant submitted that the principle of unjust enrichment cannot apply as a matter of law where there is an existing contractual relationship between the parties as in the present case where there is a sale and purchase agreement which stated the agreed sale value of RM16 million. The defendant referred to *The Law of Restitution and Unjust Enrichment in Malaysia* by Low Weng Tchung (1st edn 2015) at pp. 61 to 62 where the author summarised as follows:

> The general rule that the law of restitution or unjust enrichment becomes relevant only when the contract between the parties ceases to be operative was also alluded to by the Federal Court in *Dream Property Sdn Bhd v. Atlas Housing Sdn Bhd*, where the court underlined 'the significance of the law of unjust enrichment in relation to all the rights of the parties to a contract which has been validly terminated.

[29] The defendant further submitted that since there was no relief sought by the plaintiffs to declare nor set aside the sale and purchase agreement as null and void, the agreed sale price at RM16 million must bind plaintiff 7. The defendant relied on the Court of Appeal decision in *Bank Islam Malaysia Bhd v. Lim Kok Hoe & Anor and Other Appeals* [2009] 6 CLJ 22; [2009] 6 MLJ 839, where it was held that in the absence of legal vitiating factors, the court will seek to uphold the sanctity of the contract.

[30] Our answer to the defendant is, as stated earlier; that from the statement of claim and the plaintiffs' affidavit in reply, the plaintiffs have raised the issues of coercion and unjust enrichment. If the market or fair value of the said land stands at RM55 million and if the defendant paid RM16 million, the profit the defendant would stand to make is RM39 million and if the value of the said land is at RM51 million, the profit would be RM35 million. The amount of profit the defendant would have made is astoundingly excessive and unconscionable. Further, there were vitiating factors present in this case, which warrant the plaintiffs' allegation of coercion and unjust enrichment to be fully ventilated in a trial. Then again, it is not incumbent on the part of the court to go into a minute examination of the documents and facts of the case in order to see whether the party has a cause of action or a defence. Suffice that on the face of it, as in this appeal, the plaintiffs have pleaded a reasonable cause of action which is not obviously unsustainable. Therefore, based on these reasons, we are of the unanimous view that the plaintiffs' claim is not a plain and obvious case to warrant the recourse of the summary process of striking out under O. 18 r. 19 of the ROC 2012.

Locus Standi

[31] We will not delve too much on the issue of *locus*. The learned HCJ found that the plaintiffs had failed to establish that they had the requisite *locus standi* to bring the suit. The relevant part of the learned HCJ judgment on the issue of *locus standi* can be found at paras. 19, 20 and 21 of the grounds of judgment ("GOJ") and are as follows:

> 19. Defendan mendakwa Plaintif-Plaintif tidak mempunyai *locus standi* untuk membawa tindakan/tuntutan ini terhadap Defendan. Berdasarkan kepada pliding/Pernyataan Tuntutan mereka adalah tidak dinafikan tuntutan Plaintif-Plaintif adalah berlandaskan harga/nilai tanah H.S.(D) 87546, PT No.7929, Bandar Ampang, Daerah Ulu Langat Selangor (tanah tersebut) yang dikatakan/didakwa oleh mereka dibeli oleh Defendan atas nilaian yang terlalu rendah berbanding nilai sebenarnya. Susulan itu, Plaintif-Plaintif mendakwa Defendan telah melakukan keuntungan yang tidak munasabah, berjumlah RM22 juta. Jumlah tersebut dituntut supaya dikembalikan kepada mereka.
>
> 20. Berhubung isu tersebut, tidak dipertikaikan tanah tersebut pada asal/awalnya adalah dimiliki oleh Plaintif Ketujuh (MHSB Properties Sdn Bhd) sebelum dijual kepada Defendan melalui Perjanjian Jual Beli (Ekshibit "TC-5"). Berdasarkan dokumen hakmilik, adalah jelas Plaintif Pertama hingga Keenam tidak mempunyai sebarang kaitan dengan tanah tersebut. Mereka juga bukanlah pihak pada Perjanjian Jual Beli tanah tersebut. Oleh itu, saya bersetuju dengan hujahan peguam terpelajar Defendan

bahawa Plaintif Pertama hingga Keenam tidak mempunyai *locus standi* untuk membangkitkan isu tentang harga jualan/belian tanah tersebut. Oleh itu, saya mendapati tuntutan mereka berkaitan tanah tersebut tidak ada asas.

21. Berhubung Plaintif Ketujuh pula, susulan dan penjualan tanah tersebut kepada Defendan, saya juga bersetuju dengan hujahan peguam Defendan bahawa, selepas jualan tersebut, Plaintif Ketujuh tidak lagi mempunyai *locus standi* kerana segala hak dan kepentingan pada tanah tersebut telah dilepaskan diberikan kepada Defendan.

[32] Basically, the learned HCJ held that:

(i) as the first to sixth appellants were not parties to the sale and purchase agreement, they have no *locus standi* to seek to challenge the agreed sale price of RM16 million; and

(ii) that as the seventh appellant had delivered the original issue document of title to the respondent, they had no beneficial interest in the said land but merely held the same as a bare trustee.

[33] On this issue, we agree with the submission of the plaintiffs that all the seven plaintiffs have the necessary *locus standi* to bring on the suit against the defendant for a declaration on the fair market value of the said land, the injunction against repossession and the disposal of the buses as well as the return of the repossessed buses. Our reasons are as follows:

(i) plaintiffs 1 to 6 are the parties who have business dealings with the defendant in the leasing of the buses and the subsequent maintenance agreements for the buses.

(ii) the settlement agreement was signed by plaintiffs 1 to 6.

(iii) the debt attributable to plaintiffs 1 to 6 was in fact settled by virtue of the conveyance of the said land which the plaintiffs alleged to be worth in excess of RM55 million at fair market value, therefore the defendant was unjustly enriched and obligated to extinguish the debt, repay plaintiff 7 the excess overpayment and return the buses to plaintiffs 1 to 6.

(iv) plaintiff 7 as the registered owner of the said land conveyed the said land to the defendant and thus has the right and *locus standi* to claim unjust enrichment against the defendant and the resulting overpayment amounting to RM22,679,424.94, based on the fair market value of RM55 million or RM51 million as at 4 July 2016.

[34] In the Federal Court case of *Tan Sri Haji Othman Saat v. Mohamed Ismail* [1982] 1 LNS 2; [1982] 2 MLJ 177, at p. 1, it was held, *inter alia*, "that is not necessary for a plaintiff who seeks relief by way of declaratory judgment to show that he has a present cause of action, so long as he is somebody with such an interest in the subject matter of the action as to justify his seeking relief." And in the case of *Government of Malaysia v. Lim Kit Siang & Another Case* [1988] 1 CLJ 219; [1988] 1 CLJ (Rep) 63; [1988] 2 MLJ 12, p. 48, it was held that "Every legal system has a built-in mechanism to protect its judicial process from abuse by busy-bodies, cranks and other mischief-makers by insisting that a plaintiff should have special interest in the proceedings which he institutes. This special interest is a nexus between him and the party against who he brings his complaints to court and is known as *locus standi*." Thus based on the reasons given above and the two authorities cited, we are of the view that all the plaintiffs have *locus standi* to bring the suit against the defendant.

Conclusion

[35] In the circumstances, and for the reasons we have provided, we are satisfied, that this is not a plain and obvious case to warrant the summary application of a striking out under O. 18 r. 19 of the ROC 2012. We find merits in the appeal and therefore we allowed the appeal. The order of the High Court dated 4 January 2018 is set aside. Costs is in the cause and deposit, if any, is refunded.